

ORIGINAL

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Attorneys for Defendants VESTIN REALTY
MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 RICHARD G. GENTON, TRUSTEE OF THE
12 RICHARD G. GENTON LIVING TRUST
13 DATED 06/05/01; MARIO O. LOPEZ AND
14 ALICIA L. LOPEZ, TRUSTEES OF THE
15 LOPEZ FAMILY TRUST DATED 12/14/88;
16 CHARLES M. FELTON AND SHARON D.
17 FELTON, TRUSTEES OF THE FELTON
18 FAMILY TRUST DATED 03/25/99; MARY P.
19 FELTON, TRUSTEE OF THE MARY P.
20 FELTON TRUST, DATED 11/03/04;
21 MARLOWE J. LANCASTER AND SHIRLEY C.
22 LANCASTER, TRUSTEES OF THE
23 LANCASTER FAMILY TRUST DATED
24 06/27/90; RONALD LIGHTERINK; SHERON
25 LIGHTERINK; LUIS G. GUERRERO AND
26 EMILIA GUERRERO, TRUSTEES OF THE
27 GUERRERO FAMILY TRUST DATED
28 12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIDE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
TRUSTEES OF THE EMMET A. AND MARY
M. SJOBERG TRUST DATED 05/02/95;

FILED

06 NOV 16 PM 4:02

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PDC

DEPUTY

Case No. 06 CV 2517 BEN WMC

NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. § 1441
BY DEFENDANTS VESTIN
REALTY MORTGAGE II, INC.
(F/K/A) VESTIN FUND II, LLC,
AND VESTIN MORTGAGE, INC.

CP
VESTIN'S NOTICE OF REMOVAL

la-890501

1 MICHAEL E. COX; FRANCIS COX; DERELL
2 L. HARMON; DENISE L. HARMON; JOAN L.
3 MILLER; DONALD G. MILLER; STAN J.
4 PROGAR; MAUREEN C. PROGAR; JANE
5 HALPERN; TODD E. STERLING; CLYDE
6 MERRITT; DARLENE MERRITT; and ROES 1
7 through 5000, inclusive,

8 Plaintiffs,

9 v.

10 VESTIN REALTY MORTGAGE II, INC.,
11 (f/k/a) VESTIN FUND II, LLC, VESTIN
12 MORTGAGE, INC., and DOES 1 through 50,
13 Inclusive,

14 Defendants.

15 TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND THE CLERK OF
16 THE ABOVE-ENTITLED COURT:

17 PLEASE TAKE NOTICE that defendants VESTIN REALTY MORTGAGE
18 II, INC. (f/k/a) VESTIN FUND II, LLC, and VESTIN MORTGAGE, INC.
19 (“Vestin”) hereby remove this action from the Superior Court of California, County
20 of San Diego to the United States District Court for the Central District of
21 California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 & 1453. The grounds for
22 removal are as follows:

23 **PROCEDURAL HISTORY**

24 1. On October 13, 2006, the above-captioned Plaintiffs filed a civil action
25 in the Superior Court of California for San Diego County, entitled *Genton v. Vestin*
26 *Realty Mortgage II, Inc.* (Case No. GIC 873968) (the “Superior Court Action”). A
27 true copy of the complaint in the Superior Court Action is attached as Exhibit “A.”

28 2. On or about October 19, 2006, Plaintiffs served the Superior Court
Action on Vestin. True and correct copies of the summons received by Vestin are
attached as Exhibit “B.”

3. On November 9, 2006, Plaintiffs filed their First Amended Complaint ("FAC") in the above-entitled action. A true copy of the FAC is attached as Exhibit "C."¹

TIMELINESS OF REMOVAL

4. Vestin first received formal notice of the Superior Court Action, through service of the summons and complaint on Vestin's registered agent for service of process, on October 19, 2006.

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it has been filed within 30 days of service upon Vestin of the summons and complaint.

VENUE IN THE SOUTHERN DISTRICT

6. Vestin files this Notice of Removal with the United States District Court for the Southern District of California because Plaintiffs allege that the Superior Court Action arose in the County of San Diego. (FAC ¶¶ 3-4, 27-28.)

BASIS FOR REMOVAL JURISDICTION

7. Generally. The Superior Court Action is removable to this Court pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b)) for at least the following reasons:

8. Covered Class Action. Plaintiffs purport to prosecute the Superior Court Action on behalf of a class of "all Vestin Fund II investors who voted against the 'Roll-Up', whereby Vestin Fund II merged into Vestin Realty II." (FAC ¶ 33.) Plaintiffs allege that "there are at least 1000 members of the proposed class." (FAC ¶ 34.) See 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

9. Diversity. The Superior Court Action satisfies the minimum diversity requirements of CAFA, 28 U.S.C. § 1332(d)(2)(A), for the following reasons:

¹ As of the date of this filing, Defendants had not yet been served with the FAC.

1 a. Defendant Vestin Realty Mortgage II, Inc. (f/k/a) Vestin Fund
2 II, LLC ("Vestin Realty Mortgage II") is a publicly traded real estate investment
3 trust. It is a corporation organized and existing under the laws of the State of
4 Maryland with its principal place of business located in Las Vegas, Nevada.

5 b. Defendant Vestin Mortgage, Inc. is a corporation organized and
6 existing under the laws of the State of Nevada and is licensed there as a mortgage
7 broker.

8 c. Plaintiffs allege that the individual members of the purported
9 class are residents of California, Nevada, Texas, Washington, Wisconsin, Montana,
10 Rhode Island, New York, and New Mexico. (FAC ¶¶ 6-26.)

11 10. Matter in Controversy. This amount in controversy of this action
12 exceeds \$5,000,000 and thereby satisfies the minimum amount in controversy for
13 removal under 28 U.S.C. § 1332(d)(2). Plaintiffs allege that they suffered
14 "substantial investment losses" (FAC ¶ 37) and have brought causes of action for
15 breach of contract, breach of the implied covenant of good faith and fair dealing,
16 and elder abuse pursuant to California Civil Code § 1761. (FAC ¶¶ 41-52.) While
17 Plaintiffs do not explicitly alleged the value of the matter in controversy, they are
18 seeking compensatory damages, punitive and exemplary damages (including treble
19 damages for elder abuse) and attorneys' fees as a result of their investment losses
20 and resulting harm. (*Id.*) A fair reading of the FAC demonstrates that the amount in
21 controversy exceeds the jurisdictional minimum for removal.

22 11. No CAFA Exclusions. The Superior Court Action does not fall within
23 any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d)
24 because Vestin is not a citizen of California, the state in which the Superior Court
25 Action was originally filed.

26 ///

27 ///

NOTICE PROVIDED TO STATE COURT AND ADVERSE PARTIES

12. Vestin is filing, on the date of this Notice, a copy of this Notice of Removal in the Superior Court of California, County of San Diego and will provide written notice of this Notice of Removal to Plaintiffs, as required by 28 U.S.C. §§ 1446(d) & 1453(b). True and correct copies of the Notice to the Clerk of San Diego County Superior Court of Removal to Federal Court (without exhibits) and the Notice to Plaintiffs of Removal to Federal Court (without exhibits) that will be filed with the San Diego County Superior Court are attached hereto as Exhibits "D" and "E."

13. In filing this Notice of Removal, Vestin does not waive any defenses that may be available to it in this action.

CONCLUSION

14. Vestin respectfully requests that this Court exercise subject matter jurisdiction over the Superior Court Action; enter such orders and grant relief as may be necessary to secure removal and to prevent further proceedings in the Superior Court of California, County of San Diego; and grant to Vestin such further relief as is necessary to secure this Court's jurisdiction.

Dated: November 16, 2006

SEAN T. PROSSER
JAMES P. MANISCALCO
MORRISON & FOERSTER LLP

By: 
James P. Maniscalco

Attorneys for Defendants
VESTIN REALTY MORTGAGE II,
INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

CERTIFICATE OF SERVICE BY MAIL
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441 BY DEFENDANTS
VESTIN REALTY MORTGAGE II, INC. (F/K/A) VESTIN FUND II, LLC, AND
VESTIN MORTGAGE, INC.**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130, in accordance with Morrison & Foerster's ordinary business practices:

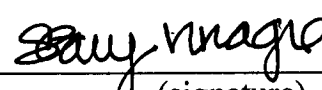
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Erwin J. Shustak, Esq.
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SHUSTAK & PARTNERS, P.C.
401 West "A" Street, Suite 2330
San Diego, CA 92101
Telephone: (619) 696-9500
Facsimile: (619) 615-5290

I declare under penalty of perjury that the above is true and correct.

Executed at San Diego, California, this 16th day of November, 2006.

Stacy Vinagre
(typed)


(signature)

GE/320.00/

FILED
CIVIL BUSINESS OFFICE 10
CENTRAL DIVISION

2006 OCT 13 P 4: 10

COURT
SAN DIEGO, CA

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 Facsimile: (619)615-5290

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO**

Case No.: **873968****CLASS ACTION**

**COMPLAINT FOR BREACH OF
 CONTRACT AGAINST VESTIN
 REALTY MORTGAGE II, INC., (f/k/a)
 VESTIN FUND II, LLC, AND VESTIN
 MORTGAGE, INC.**

RICHARD GENTON; MARIO LOPEZ;
 CHARLES FELTON; SHARON
 FELTON; MARY P. FELTON,
 TRUSTEE OF THE MARY P. FELTON
 TRUST, DATED 11/03/04; MARLOWE
 LANCASTER; SHIRLEY LANCASTER;
 RONALD LIGHTERINK; SHERON
 LIGHTERINK; LUIS GUERRERO;
 EMILIA GUERRERO; DANIEL DEL
 FRATE; MARION DEL FRATE; RALPH
 H. MCBRIDE, JANET S. ANGELOFF;
 THOMAS L. DUEPPEN; JOYCE B.
 DUEPPEN; JOEL E. JOBST; JOSEPH M.
 AMORIN; EMMET SJOBERG; MARY
 SJOBERG; MICHAEL E. COX; DERELL
 HARMON; DENISE HARMON; JOAN
 MILLER; DONALD MILLER;
 MAUREEN PROGAR; STAN PROGAR;
 JANE HALPERN; TODD E. STERLING;
 and ROES 1 through 5000, inclusive,

Plaintiffs,

vs.

VESTIN REALTY MORTGAGE II, INC.,
 (f/k/a) VESTIN FUND II, LLC, VESTIN
 MORTGAGE, INC., and DOES 1 through
 50, Inclusive,

Defendants.

SAN DIEGO SUPERIOR COURT
 Date 10-16-06 Oper Id JRN
 Case No. 873968
 Receipt No. 024611-18077
 Trans Type AF
 Allocations Amount
 GE 320.00
 Total Allocated 320.00
 Tender CK Amt 320.00
 Tender Amt
 Total Amt Paid 320.00
 Change Due 0.00

1 Plaintiffs, individually, and on behalf of all others similarly situated, allege the
2 following facts, based upon the investigation of Plaintiffs' counsel, which included, among
3 other things, witness interviews, a review of the Defendants' public documents, including
4 United States Securities and Exchange Commission ("SEC") filings, wire and press releases
5 published by and regarding Defendants, newspaper and other media reports, and information
6 readily obtainable on the Internet; Plaintiffs' counsel also reviewed Defendants'
7 correspondence with Plaintiffs, as well as the prospectuses, proxy statements, solicitation
8 letters, account opening documents, and agreements Defendants provided and entered into
9 with Plaintiffs:

10 11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This action is brought as a class action pursuant to California Code of Civil
13 Procedure Section 382, on behalf of all investors who satisfy both of the following criteria:
14 (1) the investors must have owned securities of Vestin Fund II, LLC, referred to as
15 investment "Units", at the time Vestin Fund II, LLC, merged with Vestin Realty Mortgage II,
16 Inc., on or about March 31, 2006 (the "Roll-Up"); and (2) the investors must have voted
17 against the Roll-Up of Vestin Fund II, LLC.

18 2. The Plaintiffs, individually, and on behalf of all class members, seek to pursue
19 remedies for Defendants' breach of the Vestin Fund II, LLC, Operating Agreement (the
20 "Operating Agreement"). The Operating Agreement specifically provided that, in the event
21 of a Roll-Up, Defendants must grant all investors who voted against the Roll-Up a pro-rata
22 share of the appraised net asset value of the company, but Defendants failed and refused to
23 pay all or any part of the amounts due to Plaintiffs, or to any of the class members, who all
24 voted against the Roll-Up.

25 26 **JURISDICTION AND VENUE**

27 3. Many of the acts and transactions alleged herein occurred in substantial part in
28 this Judicial District. Defendants entered into many of the agreements relating to this

1 dispute, including the Vestin Fund II, LLC, Operating Agreement, within this Judicial
2 District, and Defendants' alleged breach of the Vestin Fund II, LLC, Operating Agreement
3 occurred, in substantial part, within this Judicial District.

4 4. Defendants were licenced to conduct business, and actively conducted
5 business, within this Judicial District, at all relevant times, and Defendants maintained a
6 branch office in this Judicial District for purposes of servicing many of the class members'
7 investments in Vestin Fund II, LLC.

8 5. Plaintiffs, collectively, and on behalf of all others similarly situated, seek
9 damages in excess of the jurisdictional minimum of this Court.

10
11 **THE PARTIES**

12 6. Plaintiff RICHARD GENTON is an individual residing in Indian Wells,
13 California.

14 7. Plaintiff MARIO LOPEZ is an individual residing in Long Beach, California.

15 8. Plaintiffs CHARLES FELTON and SHARON FELTON are individuals
16 residing in Lodi, California.

17 9. Plaintiff MARY P. FELTON is an individual residing in Lodi, California.
18 Plaintiff MARY P. FELTON brings this action on her own behalf and in her capacity as
19 trustee of the MARY P. FELTON TRUST DATED 11/03/04.

20 10. Plaintiffs MARLOWE LANCASTER and SHIRLEY LANCASTER are
21 individuals residing in Novato, California.

22 11. Plaintiffs RONALD LIGHTERINK and SHERON LIGHTERINK are
23 individuals residing in La Quinta, California.

24 12. Plaintiffs LUIS GUERRERO and EMILIA GUERRERO are individuals
25 residing in Las Vegas, Nevada.

26 13. Plaintiffs DANIEL DEL FRATE and MARION DEL FRATE are individuals
27 residing in Sparks, Nevada.

1 14. Plaintiff RALPH H. MCBRIDE is an individual residing in San Antonio,
2 Texas.

3 15. Plaintiff JANET S. ANGELOFF is an individual residing in Marysville,
4 Washington.

5 16. Plaintiffs THOMAS L. DUEPPEN and JOYCE B. DUEPPEN are individuals
6 residing in Menomonee Falls, Wisconsin.

7 17. Plaintiff JOEL E. JOBST is an individual residing in Whitefish, Montana.

8 18. Plaintiff JOSEPH M. AMORIN is an individual residing in Cranston, Rhode
9 Island.

10 19. Plaintiff EMMET SJOBERG and MARY SJOBERG are individuals residing
11 in Oconomowoc, Wisconsin.

12 20. Plaintiff MICHAEL E. COX is an individual residing in Las Vegas, Nevada.

13 21. Plaintiffs DERELL HARMON and DENISE HARMON are individuals
14 residing in Granbury, Texas.

15 22. Plaintiffs JOAN MILLER and DONALD MILLER are individuals residing in
16 Pittsford, New York.

17 23. Plaintiffs MAUREEN PROGAR and STAN PROGAR are individuals
18 residing in Henderson, Nevada.

19 24. Plaintiff JANE HALPERN is an individual residing in Albuquerque, New
20 Mexico.

21 25. Plaintiff TODD E. STERLING is an individual residing in Las Vegas,
22 Nevada.

23 26. Defendant Vestin Fund II, LLC ("Vestin Fund II"), existed at all relevant
24 times as a Nevada limited liability company, with its principal place of business in Las
25 Vegas, Nevada. Vestin Fund II also maintained a branch office, at all relevant times, in La
26 Jolla, California. Vestin Fund II operated as an investment fund focused on mortgage loans,
27 and actively solicited investments and conducted business in San Diego, California, and in
28 various states across the country. On or about March 31, 2006, Vestin Fund II, LLC, merged

1 into a publicly traded real estate investment trust, Vestin Realty Mortgage II, a Maryland
2 corporation ("Vestin Realty II").

3 27. Defendant Vestin Realty II is a Maryland corporation with its principal place
4 of business in Las Vegas, Nevada. Vestin Realty II is the successor in interest to all
5 obligations, powers, duties, responsibilities, and interests of Vestin Fund II. Vestin Realty II
6 continues to actively solicit investments and conduct business in San Diego, California, and
7 in various states across the country, and its stock is publicly traded on the NASDAQ
8 Exchange.

9 28. Defendant Vestin Mortgage, Inc., is a Nevada corporation licensed in Nevada
10 as a mortgage broker ("Vestin Mortgage"). Vestin Mortgage is the manager of Vestin Realty
11 II, formerly known as Vestin Fund II, and also acts as Vestin Realty II's mortgage broker in
12 connection with most, if not all of the loans originated, purchased and sold by Vestin Realty
13 II.

14 29. Upon information and belief, each Defendant was the agent, employee,
15 successor in interest, and alter ego each other Defendant, and in doing the acts as herein
16 alleged, was acting within the course and scope of its authority as such with the expressed
17 and implied permission, instruction, knowledge, consent, and ratification of each other
18 Defendant.

19
20 **CLASS ACTION ALLEGATIONS**

21 30. Plaintiffs bring this action in their individual capacities, and on behalf of all
22 persons similarly situated and damaged by Defendants' wrongful conduct alleged herein.
23 Such a representative action is necessary to prevent and remedy the unlawful conduct alleged
24 herein.

25 31. This action is brought and may be properly maintained as a class action
26 pursuant to the provisions of California Code of Civil Procedure § 382. Plaintiffs bring this
27 action on behalf of themselves and all members of the class, defined as follows: all Vestin
28

1 Fund II investors who voted against the "Roll-Up", whereby Vestin Fund II merged into
 2 Vestin Realty II, on or about March 31, 2006. Plaintiffs seek to pursue remedies for breach
 3 of contract, based on Defendants' failure and refusal to offer or pay the Plaintiffs their pro-
 4 rata share of the appraised net asset value of Vestin Fund II, pursuant to the Operating
 5 Agreement. Excluded from the proposed class are Defendants, any entities in which any of
 6 the Defendants has a controlling interest, and the officers, directors, affiliates, attorneys,
 7 heirs, predecessors and successors in interest, subsidiaries, employees, agents and/or assigns
 8 of any of the Defendants.

9 32. The members of the class are so numerous that joinder of all members is
 10 impracticable. While the exact number of class members is unknown to Plaintiffs at this time
 11 and can only be ascertained through discovery, Plaintiffs believe that there are at least 1000
 12 members of the proposed class.

13 33. There is a well-defined community of interest among the members of the
 14 proposed class. Plaintiffs, like all other members of the class, affirmatively voted against the
 15 Roll-Up of Vestin Fund II. The Operating Agreement expressly provided that in the event of
 16 a Roll-Up, each investor who voted against the Roll-Up was entitled to cash in an amount
 17 equal to his/her pro-rata share of the appraised net asset value of the company.¹ A true and
 18 correct copy of the Operating Agreement is attached hereto as Exhibit 1.

19 34. More specifically, Section 13.2 of the Operating Agreement provides, in
 20 relevant part:

21 "13.2 *Members' Rights in a Roll-Up.* If a Roll-Up is effected as to the
 22 Company, the Roll-Up Entity making the offer to the Company shall offer to
 23 each Member who votes against the Roll-Up...cash in an amount equal to the
 Member's pro-rata share of the appraised Net Asset Value of the Company."
 Exhibit 1, Operating Agreement § 13.2, at p. A-24-A25.

24 Defendants, however, failed and refused to provide the members of the class all or any part of
 25 the amounts due under the Operating Agreement. Instead, Defendants unilaterally converted

26
 27 ¹ A "Roll-Up" is specifically defined in the Operating Agreement to include a merger
 28 or conversion of the company into a real estate investment trust, such as Vestin Realty II.
 Exhibit 1, Operating Agreement §§ 2.40-2.41, at pp. A-6, A-7.

1 the class members' Units of Vestin Fund II into an equivalent number of shares of Vestin
2 Realty II common stock, although Defendant knew, or reasonably should have known, that
3 the conversion would result in substantial investment losses to the members of the class.

4 35. As a result of Defendants' wrongful conduct alleged herein, the class members
5 have all suffered the same or similar injury. Between June 2001 and March 2006, the class
6 members purchased Units of Vestin Fund II for between \$9.60 and \$10.00 per Unit. As of
7 the date of the Roll-Up, on or about March 31, 2006, the class members' pro-rata share of the
8 Net Asset Value of the company, as that term is defined in the Operating Agreement, and
9 according to Defendants' own publicly available accounting records, was \$9.60 per Unit. As
10 alleged above, Defendants failed to offer or pay any of the class members \$9.60 per Unit, and
11 instead Defendants converted the class members' Units into shares of Vestin Realty II
12 common stock, which began trading on the NASDAQ exchange on or about May 1, 2006.
13 Since Vestin Realty II's initial public offering on or about May 1, 2006, Vestin Realty II's
14 stock has traded in the range of approximately \$5.00 to \$7.00 per share, resulting in
15 substantial investment losses to all of the class members, who were entitled to a minimum of
16 \$9.60 per Unit on the date of the Roll-Up, pursuant to the express terms of the Operating
17 Agreement. Additionally, the average daily trading volume of Vestin Realty II stock is well
18 below 45,000 shares, making it extremely difficult for class members to liquidate their
19 investments.

20 36. The questions of law and fact at issue in this case are common to Plaintiffs
21 and all class members, and those questions predominate over any questions that may affect
22 individual members of the class. The common question of fact central to this class action is
23 whether the conversion and merger of Vestin Fund II, LLC, into Vestin Realty II on March
24 31, 2006, constituted a "Roll-Up", as that term is defined in the Vestin Fund II, LLC,
25 Operating Agreement. The common questions of law central to this class action include: (a)
26 whether Defendants breached a duty to offer and pay the class members their pro-rata share
27 of the appraised Net Asset Value of the Company; and (b) whether the class members are
28

1 entitled to recover damages as a result of Defendants' breach.

2 37. Plaintiffs' claims will fairly and adequately represent and protect the interests
3 of the class. They have retained counsel with substantial experience in prosecuting public
4 investor lawsuits, and Plaintiffs and their counsel are committed to vigorously prosecuting
5 this action on behalf of the class and have the financial resources necessary to do so. Neither
6 Plaintiffs nor their counsel have any interest adverse to those of the class.

7 38. A class action is superior to all other available methods for the fair and
8 efficient adjudication of this controversy since individual joinder of all members of the class
9 is impracticable. Further, as the damages suffered by each individual member of the class
10 may be relatively small, the expense and burden of individual litigation would make it
11 difficult or impossible for individual members of the class to redress the wrongs done to
12 them. The conduct of this action as a class action presents fewer management difficulties
13 than multiple trials of identical factual issues, and conserves the resources of the parties and
14 the court system and protects the rights of each class member.

15 **FIRST CAUSE OF ACTION**
16 **AGAINST ALL DEFENDANTS**
17 **(FOR BREACH OF CONTRACT)**

18 39. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
19 1 through 38 above as if more fully set forth at length herein.

20 40. Plaintiffs, and all class members, entered into the Operating Agreement with
21 all Defendants. In accordance with Section 13.2 of the Operating Agreement, the Plaintiffs,
22 and all members of the class, voted against the proposed Roll-Up, and they reasonably
23 expected to exercise their "*Members' Rights in a Roll-Up*". As set forth above, the
24 "*Members' Rights in a Roll-Up*" provision of the Operating Agreement provided that each
25 member of the company who voted against the Roll-Up was entitled to receive cash in an
26 amount equal to his or her pro-rata share of the appraised Net Asset Value of the company.

27 41. By letter dated in or around February 2006, Defendants advised all Vestin
28 Fund II investors that the "*Members Rights in a Roll-Up*" section of the Operating Agreement

1 was unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II.
2 Defendants failed and refused to explain how or why they arrived at this conclusion, and they
3 flatly refused to offer any of the class members a pro-rata share of the company's appraised
4 Net Asset Value. Defendants thereby breached the Operating Agreement.

5 42. As a result of Defendants' breach of the Operating Agreement, Plaintiffs and
6 all class members have suffered substantial damages in an amount to be proven at trial.

7 43. Plaintiffs are ready, willing and able to tender, and do hereby tender, all of
8 their shares of Vestin Realty II stock which they received from Defendants in connection with
9 the Roll-Up, in exchange for rescission and restoration of the consideration paid therefor,
10 with statutory interest from the date of the investment to the date of rescission.

11
12 **SECOND CAUSE OF ACTION**
13 **AGAINST ALL DEFENDANTS**
(FOR BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING)

14 44. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
15 1 through 43 above as if more fully set forth at length herein.

16 45. Implicit in the Operating Agreement is a covenant by Defendants to act in
17 good faith and deal fairly with Plaintiffs and all Vestin Fund II investors.

18 46. As a result of the wrongful conduct, alleged above, Defendants breached their
19 implied covenant of good faith and fair dealing, and thereby proximately caused Plaintiffs,
20 and all members of the class, to sustain substantial investment losses and other damages in an
21 amount to be proven at trial.

22
23 **THIRD CAUSE OF ACTION**
AGAINST ALL DEFENDANTS
24 **(FOR ELDER ABUSE)**

25 47. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
26 1 through 46 above as if more fully set forth at length herein.

27 48. Many of the Plaintiffs and members of the class are senior citizens, pursuant
28 to California Civil Code § 1761, and other applicable States' laws.

49. As a result of the class members' age and condition, and inability to comprehend the Operating Agreement and other terms of the Vestin Fund II investment, they were substantially more vulnerable than other members of the public to financial abuse. Defendants knew, or reasonably should have known, that the class members were entitled to exercise their "*Members Rights in a Roll-Up*", pursuant to the express terms of the Operating Agreement, pro-rata share of the company's appraised Net Asset Value. Defendants, however, advised the class members, in bad faith, that the "*Members Rights in a Roll-Up*" section of the Operating Agreement was unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II. Defendants thereby engaged in the financial abuse of elders, with the intent and purpose to exploit their age and vulnerability.

50. Pursuant to California Welfare & Institution Code § 15657.5, and California Civil Code § 3345, as well as other applicable States' Elder Abuse Statutes, the trier of fact herein is authorized to award treble damages, reasonable attorneys fees, and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

(a) For certification of this action as a plaintiff class action as set forth herein, pursuant to California Code of Civil Procedure § 382;

(b) For an award of compensatory damages in an amount to be proven at trial, including prejudgment interest thereon;

(c) For an award of reasonable attorneys fees and costs incurred in this action as permitted by law;

(d) For an award of punitive and exemplary damages in an amount appropriate to punish and make an example of Defendants;

(e) For an award of treble damages pursuant to applicable States' Elder Abuse Statutes; and

(f) Such other and further relief as the Court may deem just and proper.

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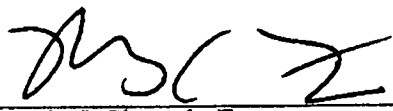
JURY TRIAL DEMANDED

Plaintiffs, on behalf of themselves and all class members, hereby demand a trial by jury.

Respectfully Submitted,

Dated: October 12, 2006

SHUSTAK & PARTNERS, P.C.

By: 
Erwin J. Shustak, Esq.
Thomas C. Frost, Esq.
John Cleary, Esq.
Attorneys for Plaintiffs

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II, LLC, VESTIN MORTGAGE, INC., and DOES 1 through 50 inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RICHARD GENTON; MARIO LOPEZ; CHARLES FELTON;
SHARON FELTON; MARY P. FELTON, TRUSTEE OF THE MARY
Additional Parties Attachment Form is attached

SUM-100

FILED
FOR COURT USE ONLY
CIVIL (SOLO PARA USO DE LA CORTE)
CENTRAL DIVISION

2006 OCT 13 P 4 11

COURT
COUNTY CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerá. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court, Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER: 06-873968
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Erwin Shustak, Esq. and Thomas Frost, Esq. (619-696-9500)
401 West A Street, Suite 2330, San Diego, CA 92101

DATE:

(Fecha) OCT 13 2006

Clerk, by _____
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Vestin Realty Mortgage II, Inc. (f/k/a) VESTIN FUND II, LLC.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date):

Page 1 of 1

SHORT TITLE:

Richard Genton, et al. v. Vestin Realty Mortgage II, Inc., et al.

CASE NUMBER:

873968

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- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party):

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

P. FELTON TRUST, DATED 11/03/04; MARLOWE LANCASTER; SHIRLEY LANCASTER; RONALD LIGHTERINK; SHERON LIGHTERINK; LUIS GUERRERO; EMILIA GUERRERO; DANIEL DEL FRATE; MARION DEL FRATE; RALPH H. MCBRIDE,; JANET S. ANGELOFF; THOMAS L. DUEPPEN; JOYCE B. DUEPPEN; JOEL E. JOBST; JOSEPH M. AMORIN; EMMET SJOBERG; MARY SJOBERG; MICHAEL E. COX; DERELL HARMON; DENISE HARMON; JOAN MILLER; DONALD MILLER; MAUREEN PROGAR; STAN PROGAR; JANE HALPERN; TODD E. STERLING; and ROES 1 through 5000, inclusive.

Page 1 of 1

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II,
LLC, VESTIN MORTGAGE, INC., and DOES 1 through 50 inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RICHARD GENTON; MARIO LOPEZ; CHARLES FELTON;
SHARON FELTON; MARY P. FELTON, TRUSTEE OF THE MARY

Additional Parties Attachment Form is attached

SUM-100
FILED
FOR COURT USE ONLY
CIVIL DIVISION
CENTRAL DIVISION
DOES 10
SOLO PARA USAR EN LA CORTE

2006 OCT 13 P 4 11

COURT
SAN DIEGO, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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(El nombre y dirección de la corte es):

San Diego Superior Court, Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso)

873968

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Erwin Shustak, Esq. and Thomas Frost, Esq. (619-696-9500)
401 West A Street, Suite 2330, San Diego, CA 92101

DATE:

(Fecha)

OCT 13 2006

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

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(SEAL)

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2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Vestin Mortgage, Inc.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☒ by personal delivery on (date):

Page 1 of 1

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Richard Genton, et al. v. Vestin Realty Mortgage II, Inc., et al.

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List additional parties (Check only one box. Use a separate page for each type of party):

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

P. FELTON TRUST, DATED 11/03/04; MARLOWE LANCASTER; SHIRLEY LANCASTER; RONALD LIGHTERINK; SHERON LIGHTERINK; LUIS GUERRERO; EMILIA GUERRERO; DANIEL DEL FRATE; MARION DEL FRATE; RALPH H. MCBRIDE; JANET S. ANGELOFF; THOMAS L. DUEPPEN; JOYCE B. DUEPPEN; JOEL E. JOBST; JOSEPH M. AMORIN; EMMET SJOBERG; MARY SJOBERG; MICHAEL E. COX; DERELL HARMON; DENISE HARMON; JOAN MILLER; DONALD MILLER; MAUREEN PROGAR; STAN PROGAR; JANE HALPERN; TODD E. STERLING; and ROES 1 through 5000, inclusive.

Page 1 of 1

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CIVIL DISTRICT OFFICE 11
SAN DIEGO DIVISION

2006 NOV -9 12 4: 16

SUPERIOR COURT
SAN DIEGO COUNTY, CA

Erwin J. Shustak, Esq. (SBN 119152)
 Thomas C. Frost, Esq. (SBN 185187)
 John Cleary, Esq. (SBN 187821)
SHUSTAK & PARTNERS, P.C.
 401 West "A" Street, Suite 2330
 San Diego, California 92101
 Telephone: (619) 696.9500
 Facsimile: (619) 615-5290

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO**

RICHARD G. GENTON, TRUSTEE OF
 THE RICHARD G. GENTON LIVING
 TRUST DATED 06/05/01; MARIO O.
 LOPEZ AND ALICIA L. LOPEZ,
 TRUSTEES OF THE LOPEZ FAMILY
 TRUST DATED 12/14/88; CHARLES M.
 FELTON AND SHARON D. FELTON,
 TRUSTEES OF THE FELTON FAMILY
 TRUST DATED 03/25/99; MARY P.
 FELTON, TRUSTEE OF THE MARY P.
 FELTON TRUST, DATED 11/03/04;
 MARLOWE J. LANCASTER AND
 SHIRLEY C. LANCASTER, TRUSTEES
 OF THE LANCASTER FAMILY TRUST
 DATED 06/27/90; RONALD
 LIGHTERINK; SHERON LIGHTERINK;
 LUIS G. GUERRERO AND EMILIA
 GUERRERO, TRUSTEES OF THE
 GUERRERO FAMILY TRUST DATED
 12/19/96; DANIEL DEL FRATE AND
 MARION DEL FRATE, TRUSTEES OF
 THE DEL FRATE LIVING TRUST,
 DATED 09/14/99; RALPH H. MCBRIDE,
 TRUSTEE OF THE RALPH H. MCBRIDE
 TRUST DATED 04/26/04; JANET S.
 ANGELOFF; THOMAS L. DUEPPEN;
 JOYCE B. DUEPPEN; JOEL E. JOBST,
 TRUSTEE OF THE JOBST FAMILY
 TRUST DATED 06/17/94; JOSEPH M.
 AMORIN; EMMET A. SJOBERG AND
 MARY M. SJOBERG, TRUSTEES OF
 THE EMMET A. AND MARY M.
 SJOBERG TRUST, DATED 05/02/95;
 MICHAEL E. COX; FRANCES COX;
 DERELL L. HARMON; DENISE L.
 HARMON; JOAN L. MILLER; DONALD

Case No.: GIC 873968

CLASS ACTION

**FIRST AMENDED COMPLAINT
 AGAINST VESTIN REALTY
 MORTGAGE II, INC., (f/k/a) VESTIN
 FUND II, LLC, AND VESTIN
 MORTGAGE, INC., FOR:**

- 1. BREACH OF CONTRACT;**
- 2. BREACH OF THE IMPLIED
 COVENANT OF GOOD FAITH AND
 FAIR DEALING; AND**
- 3. ELDER ABUSE**

Judge:	Hon. Joan M. Lewis
Dept.:	65
Complaint filed:	October 13, 2006
Trial date:	None

1 G. MILLER; STAN J. PROGAR;
 2 MAUREEN C. PROGAR; JANE
 3 HALPERN; TODD E. STERLING; CLYDE
 4 MERRITT; DARLENE MERRITT; and
 5 ROES 1 through 5000, inclusive,

6 Plaintiffs,

7 vs.

8 VESTIN REALTY MORTGAGE II, INC.,
 9 (f/k/a) VESTIN FUND II, LLC, VESTIN
 10 MORTGAGE, INC., and DOES 1 through
 11 50, Inclusive,

12 Defendants.

13
 14 Plaintiffs, individually, and on behalf of all others similarly situated, allege the
 15 following facts, based upon the investigation of Plaintiffs' counsel, which included, among
 16 other things, witness interviews, a review of the Defendants' public documents, including
 17 United States Securities and Exchange Commission ("SEC") filings, wire and press releases
 18 published by and regarding Defendants, newspaper and other media reports, and information
 19 readily obtainable on the Internet; Plaintiffs' counsel also reviewed Defendants'
 20 correspondence with Plaintiffs, as well as the prospectuses, proxy statements, solicitation
 21 letters, account opening documents, and agreements Defendants provided and entered into
 22 with Plaintiffs:

23 NATURE OF THE ACTION AND OVERVIEW

24 1. This action is brought as a class action pursuant to California Code of Civil
 25 Procedure Section 382, on behalf of all investors who satisfy both of the following criteria:
 26 (1) the investors must have owned securities of Vestin Fund II, LLC, referred to as
 27 investment "Units", at the time Vestin Fund II, LLC, merged with Vestin Realty Mortgage II,
 28 Inc., on or about March 31, 2006 (the "Roll-Up"); and (2) the investors must have voted
 against the Roll-Up of Vestin Fund II, LLC.

2. The Plaintiffs, individually, and on behalf of all class members, seek to pursue
 remedies for Defendants' breach of the Vestin Fund II, LLC, Operating Agreement (the
 "Operating Agreement"). The Operating Agreement specifically provided that, in the event

1 of a Roll-Up, Defendants must grant all investors who voted against the Roll-Up a pro-rata
2 share of the appraised net asset value of the company, but Defendants failed and refused to
3 pay all or any part of the amounts due to Plaintiffs, or to any of the class members, who all
4 voted against the Roll-Up.

5 **JURISDICTION AND VENUE**

6 3. Many of the acts and transactions alleged herein occurred in substantial part in
7 this Judicial District. Defendants entered into many of the agreements relating to this
8 dispute, including the Vestin Fund II, LLC, Operating Agreement, within this Judicial
9 District, and Defendants' alleged breach of the Vestin Fund II, LLC, Operating Agreement
10 occurred, in substantial part, within this Judicial District.

11 4. Defendants were licenced to conduct business, and actively conducted
12 business, within this Judicial District, at all relevant times, and Defendants maintained a
13 branch office in this Judicial District for purposes of servicing many of the class members'
14 investments in Vestin Fund II, LLC.

15 5. Plaintiffs, collectively, and on behalf of all others similarly situated, seek
16 damages in excess of the jurisdictional minimum of this Court.

17 **THE PARTIES**

18 6. Plaintiff RICHARD G. GENTON is an individual residing in Indian Wells,
19 California. Plaintiff RICHARD G. GENTON brings this action on his own behalf and in his
20 capacity as trustee of the RICHARD G. GENTON LIVING TRUST DATED 06/05/01.

21 7. Plaintiffs MARIO O. LOPEZ and ALICIA L. LOPEZ are individuals residing
22 in Long Beach, California. Plaintiffs MARIO O. LOPEZ and ALICIA L. LOPEZ bring this
23 action in their individual capacities and in their capacities as trustees of the LOPEZ FAMILY
24 TRUST DATED 12/14/88.

25 8. Plaintiffs CHARLES M. FELTON and SHARON D. FELTON are individuals
26 residing in Lodi, California. Plaintiffs CHARLES M. FELTON and SHARON D. FELTON
27 bring this action in their individual capacities and in their capacities as trustees of the
28

1 FELTON FAMILY TRUST DATED 03/25/99.

2 9. Plaintiff MARY P. FELTON is an individual residing in Lodi, California.
3 Plaintiff MARY P. FELTON brings this action on her own behalf and in her capacity as
4 trustee of the MARY P. FELTON TRUST DATED 11/03/04.

5 10. Plaintiffs MARLOWE LANCASTER and SHIRLEY LANCASTER are
6 individuals residing in Novato, California. Plaintiffs MARLOWE LANCASTER and
7 SHIRLEY LANCASTER bring this action in their individual capacities and in their
8 capacities as trustees of the LANCASTER FAMILY TRUST DATED 06/27/90.

9 11. Plaintiffs RONALD LIGHTERINK and SHERON LIGHTERINK are
10 individuals residing in La Quinta, California.

11 12. Plaintiffs LUIS GUERRERO and EMILIA GUERRERO are individuals
12 residing in Las Vegas, Nevada. Plaintiffs LUIS GUERRERO and EMILIA GUERRERO
13 bring this action in their individual capacities and in their capacities as trustees of the
14 GUERRERO FAMILY TRUST DATED 12/19/96.

15 13. Plaintiffs DANIEL DEL FRATE and MARION DEL FRATE are individuals
16 residing in Sparks, Nevada. Plaintiffs DANIEL DEL FRATE and MARION DEL FRATE
17 bring this action in their individual capacities and in their capacities as trustees of the DEL
18 FRATE LIVING TRUST DATED 09/14/99.

19 14. Plaintiff RALPH H. MCBRIDE is an individual residing in San Antonio,
20 Texas. Plaintiff RALPH H. MCBRIDE brings this action on his own behalf and in his
21 capacity as trustee of the RALPH H. MCBRIDE TRUST DATED 04/26/04.

22 15. Plaintiff JANET S. ANGELOFF is an individual residing in Marysville,
23 Washington.

24 16. Plaintiffs THOMAS L. DUEPPEN and JOYCE B. DUEPPEN are individuals
25 residing in Menomonee Falls, Wisconsin.

26 17. Plaintiff JOEL E. JOBST is an individual residing in Whitefish, Montana.
27 Plaintiff JOEL E. JOBST brings this action on his own behalf and in his capacity as trustee of
28 the JOBST FAMILY TRUST DATED 06/17/94.

1 18. Plaintiff JOSEPH M. AMORIN is an individual residing in Cranston, Rhode
2 Island.

3 19. Plaintiffs EMMET A. SJOBERG and MARY M. SJOBERG are individuals
4 residing in Oconomowoc, Wisconsin. Plaintiffs EMMET A. SJOBERG and MARY M.
5 SJOBERG bring this action in their individual capacities and in their capacities as trustees of
6 the EMMET A. AND MARY M. SJOBERG TRUST DATED 05/02/95.

7 20. Plaintiffs MICHAEL E. COX and FRANCES COX are individuals residing in
8 Las Vegas, Nevada.

9 21. Plaintiffs DERELL L. HARMON and DENISE L. HARMON are individuals
10 residing in Granbury, Texas.

11 22. Plaintiffs JOAN L. MILLER and DONALD G. MILLER are individuals
12 residing in Pittsford, New York.

13 23. Plaintiffs STAN J. PROGAR and MAUREEN C. PROGAR are individuals
14 residing in Henderson, Nevada.

15 24. Plaintiff JANE HALPERN is an individual residing in Albuquerque, New
16 Mexico.

17 25. Plaintiff TODD E. STERLING is an individual residing in Las Vegas,
18 Nevada.

19 26. Plaintiffs CLYDE MERRITT and DARLENE MERRITT are individuals
20 residing in Weatherford, Texas.

21 27. Defendant Vestin Fund II, LLC ("Vestin Fund II"), existed at all relevant
22 times as a Nevada limited liability company, with its principal place of business in Las
23 Vegas, Nevada. Vestin Fund II also maintained a branch office, at all relevant times, in La
24 Jolla, California. Vestin Fund II operated as an investment fund focused on mortgage loans,
25 and actively solicited investments and conducted business in San Diego, California, and in
26 various states across the country. On or about March 31, 2006, Vestin Fund II, LLC, merged
27 into a publicly traded real estate investment trust, Vestin Realty Mortgage II, a Maryland
28

1 corporation ("Vestin Realty II").

2 28. Defendant Vestin Realty II is a Maryland corporation with its principal place
3 of business in Las Vegas, Nevada. Vestin Realty II is the successor in interest to all
4 obligations, powers, duties, responsibilities, and interests of Vestin Fund II. Vestin Realty II
5 continues to actively solicit investments and conduct business in San Diego, California, and
6 in various states across the country, and its stock is publicly traded on the NASDAQ
7 Exchange.

8 29. Defendant Vestin Mortgage, Inc., is a Nevada corporation licensed in Nevada
9 as a mortgage broker ("Vestin Mortgage"). Vestin Mortgage is the manager of Vestin Realty
10 II, formerly known as Vestin Fund II, and also acts as Vestin Realty II's mortgage broker in
11 connection with most, if not all of the loans originated, purchased and sold by Vestin Realty
12 II.

13 30. Plaintiffs are currently unaware of the specific identities of the Defendants
14 named as DOES 1 through 50, inclusive. As soon as Plaintiffs become aware of more
15 specific information regarding these Defendants, Plaintiffs will promptly amend the
16 Complaint accordingly.

17 31. Upon information and belief, each Defendant was the agent, employee,
18 successor in interest, and alter ego each other Defendant, and in doing the acts as herein
19 alleged, was acting within the course and scope of its authority as such with the expressed
20 and implied permission, instruction, knowledge, consent, and ratification of each other
21 Defendant.

22 **CLASS ACTION ALLEGATIONS**

23 32. Plaintiffs bring this action in their individual capacities, and on behalf of all
24 persons similarly situated and damaged by Defendants' wrongful conduct alleged herein.
25 Such a representative action is necessary to prevent and remedy the unlawful conduct alleged
26 herein.

27 33. This action is brought and may be properly maintained as a class action
28

1 pursuant to the provisions of California Code of Civil Procedure § 382. Plaintiffs bring this
2 action on behalf of themselves and all members of the class, defined as follows: all Vestin
3 Fund II investors who voted against the "Roll-Up", whereby Vestin Fund II merged into
4 Vestin Realty II, on or about March 31, 2006. Plaintiffs seek to pursue remedies for breach
5 of contract, based on Defendants' failure and refusal to offer or pay the Plaintiffs their pro-
6 rata share of the appraised net asset value of Vestin Fund II, pursuant to the Operating
7 Agreement. Excluded from the proposed class are Defendants, any entities in which any of
8 the Defendants has a controlling interest, and the officers, directors, affiliates, attorneys,
9 heirs, predecessors and successors in interest, subsidiaries, employees, agents and/or assigns
10 of any of the Defendants.

11 34. The members of the class are so numerous that joinder of all members is
12 impracticable. While the exact number of class members is unknown to Plaintiffs at this time
13 and can only be ascertained through discovery, Plaintiffs believe that there are at least 1000
14 members of the proposed class.

15 35. There is a well-defined community of interest among the members of the
16 proposed class. Plaintiffs, like all other members of the class, affirmatively voted against the
17 Roll-Up of Vestin Fund II. The Operating Agreement expressly provided that in the event of
18 a Roll-Up, each investor who voted against the Roll-Up was entitled to cash in an amount
19 equal to his/her pro-rata share of the appraised net asset value of the company.¹ A true and
20 correct copy of the Operating Agreement is attached hereto as Exhibit 1.

21 36. More specifically, Section 13.2 of the Operating Agreement provides, in
22 relevant part:

23 "13.2 *Members' Rights in a Roll-Up.* If a Roll-Up is effected as to the
24 Company, the Roll-Up Entity making the offer to the Company shall offer to
25 each Member who votes against the Roll-Up...cash in an amount equal to the
26 Member's pro-rata share of the appraised Net Asset Value of the Company."
Exhibit 1, Operating Agreement § 13.2, at p. A-24-A25.

27 ¹ A "Roll-Up" is specifically defined in the Operating Agreement to include a merger
28 or conversion of the company into a real estate investment trust, such as Vestin Realty II.
Exhibit 1, Operating Agreement §§ 2.40-2.41, at pp. A-6, A-7.

1 Defendants, however, failed and refused to provide the members of the class all or any part of
2 the amounts due under the Operating Agreement. Instead, Defendants unilaterally converted
3 the class members' Units of Vestin Fund II into an equivalent number of shares of Vestin
4 Realty II common stock, although Defendants knew, or reasonably should have known, that
5 the conversion would result in substantial investment losses to the members of the class.

6 37. As a result of Defendants' wrongful conduct alleged herein, the class members
7 have all suffered the same or similar injury. Between June 2001 and March 2006, the class
8 members purchased Units of Vestin Fund II for between \$9.60 and \$10.00 per Unit. As of
9 the date of the Roll-Up, on or about March 31, 2006, the class members' pro-rata share of the
10 Net Asset Value of the company, as that term is defined in the Operating Agreement, and
11 according to Defendants' own publicly available accounting records, was \$9.60 per Unit. As
12 alleged above, Defendants failed to offer or pay any of the class members \$9.60 per Unit, and
13 instead Defendants converted the class members' Units into shares of Vestin Realty II
14 common stock, which began trading on the NASDAQ exchange on or about May 1, 2006.
15 Since Vestin Realty II's initial public offering on or about May 1, 2006, Vestin Realty II's
16 stock has traded in the range of approximately \$5.00 to \$7.00 per share, resulting in
17 substantial investment losses to all of the class members, who were entitled to a minimum of
18 \$9.60 per Unit on the date of the Roll-Up, pursuant to the express terms of the Operating
19 Agreement. Additionally, the average daily trading volume of Vestin Realty II stock is well
20 below 45,000 shares, making it extremely difficult for class members to liquidate their
21 investments.

22 38. The questions of law and fact at issue in this case are common to Plaintiffs
23 and all class members, and those questions predominate over any questions that may affect
24 individual members of the class. The common question of fact central to this class action is
25 whether the conversion and merger of Vestin Fund II, LLC, into Vestin Realty II on March
26 31, 2006, constituted a "Roll-Up", as that term is defined in the Vestin Fund II, LLC,
27 Operating Agreement. The common questions of law central to this class action include: (a)
28

1 whether Defendants breached a duty to offer and pay the class members their pro-rata share
2 of the appraised Net Asset Value of the Company; and (b) whether the class members are
3 entitled to recover damages as a result of Defendants' breach.

4 39. Plaintiffs' claims will fairly and adequately represent and protect the interests
5 of the class. They have retained counsel with substantial experience in prosecuting public
6 investor lawsuits, and Plaintiffs and their counsel are committed to vigorously prosecuting
7 this action on behalf of the class and have the financial resources necessary to do so. Neither
8 Plaintiffs nor their counsel have any interest adverse to those of the class.

9 40. A class action is superior to all other available methods for the fair and
10 efficient adjudication of this controversy since individual joinder of all members of the class
11 is impracticable. Further, as the damages suffered by each individual member of the class
12 may be relatively small, the expense and burden of individual litigation would make it
13 difficult or impossible for individual members of the class to redress the wrongs done to
14 them. The conduct of this action as a class action presents fewer management difficulties
15 than multiple trials of identical factual issues, and conserves the resources of the parties and
16 the court system and protects the rights of each class member.

17
18 **FIRST CAUSE OF ACTION**
19 **AGAINST ALL DEFENDANTS**
20 **(FOR BREACH OF CONTRACT)**

21 41. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
22 1 through 40 above as if more fully set forth at length herein.

23 42. Plaintiffs, and all class members, entered into the Operating Agreement with
24 all Defendants. In accordance with Section 13.2 of the Operating Agreement, the Plaintiffs,
25 and all members of the class, voted against the proposed Roll-Up, and they reasonably
26 expected to exercise their "*Members' Rights in a Roll-Up*". As set forth above, the
27 "*Members' Rights in a Roll-Up*" provision of the Operating Agreement provided that each
28 member of the company who voted against the Roll-Up was entitled to receive cash in an
amount equal to his or her pro-rata share of the appraised Net Asset Value of the company.

1 43. By letter dated in or around February 2006, Defendants advised all Vestin
2 Fund II investors that the "*Members Rights in a Roll-Up*" section of the Operating Agreement
3 was unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II.
4 Defendants failed and refused to explain how or why they arrived at this conclusion, and they
5 flatly refused to offer any of the class members a pro-rata share of the company's appraised
6 Net Asset Value. Defendants thereby breached the Operating Agreement.

7 44. As a result of Defendants' breach of the Operating Agreement, Plaintiffs and
8 all class members have suffered substantial damages in an amount to be proven at trial.

9 45. Plaintiffs are ready, willing and able to tender, and do hereby tender, all of
10 their shares of Vestin Realty II stock which they received from Defendants in connection with
11 the Roll-Up, in exchange for rescission and restoration of the consideration paid therefor,
12 with statutory interest from the date of the investment to the date of rescission.

13
14 **SECOND CAUSE OF ACTION**
15 **AGAINST ALL DEFENDANTS**
16 **(FOR BREACH OF THE IMPLIED COVENANT**
17 **OF GOOD FAITH AND FAIR DEALING)**

18 46. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
19 1 through 45 above as if more fully set forth at length herein.

20 47. Implicit in the Operating Agreement is a covenant by Defendants to act in
21 good faith and deal fairly with Plaintiffs and all Vestin Fund II investors.

22 48. As a result of the wrongful conduct, alleged above, Defendants breached their
23 implied covenant of good faith and fair dealing, and thereby proximately caused Plaintiffs,
24 and all members of the class, to sustain substantial investment losses and other damages in an
25 amount to be proven at trial.

26 **THIRD CAUSE OF ACTION**
27 **AGAINST ALL DEFENDANTS**
28 **(FOR ELDER ABUSE)**

 49. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs
1 through 48 above as if more fully set forth at length herein.

1 50. Many of the Plaintiffs and members of the class are senior citizens, pursuant
2 to California Civil Code § 1761, and other applicable States' laws.

3 51. As a result of the class members' age and condition, and inability to
4 comprehend the Operating Agreement and other terms of the Vestin Fund II investment, they
5 were substantially more vulnerable than other members of the public to financial abuse.
6 Defendants knew, or reasonably should have known, that the class members were entitled to
7 exercise their "*Members Rights in a Roll-Up*" and receive their pro-rata share of the
8 company's appraised Net Asset Value. Defendants, however, advised the class members, in
9 bad faith, that the "*Members Rights in a Roll-Up*" section of the Operating Agreement was
10 unenforceable and did not apply to the merger of Vestin Fund II into Vestin Realty II.
11 Defendants thereby engaged in the financial abuse of elders, with the intent and purpose to
12 exploit their age and vulnerability.

13 52. Pursuant to California Welfare & Institution Code § 15657.5, and California
14 Civil Code § 3345, as well as other applicable States' Elder Abuse Statutes, the trier of fact
15 herein is authorized to award treble damages, reasonable attorneys fees, and costs of suit.
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

19 (a) For certification of this action as a plaintiff class action as set forth herein,
20 pursuant to California Code of Civil Procedure § 382;

21 (b) For an award of compensatory damages in an amount to be proven at trial,
22 including prejudgment interest thereon;

23 (c) For an award of reasonable attorneys fees and costs incurred in this action as
24 permitted by law;

25 (d) For an award of punitive and exemplary damages in an amount appropriate to
26 punish and make an example of Defendants;

27 (e) For an award of treble damages pursuant to applicable States' Elder Abuse
28

1 Statutes; and

2 (f) Such other and further relief as the Court may deem just and proper.

3

4 **JURY TRIAL DEMANDED**

5 Plaintiffs, on behalf of themselves and all class members, hereby demand a trial by jury.

6

7 Respectfully Submitted,

8 Dated: November 9, 2006

SHUSTAK & PARTNERS, P.C.

9

10

By: 

Erwin J. Shustak, Esq.

Thomas C. Frost, Esq.

John Cleary, Esq.

Attorneys for Plaintiffs

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10 Attorneys for Defendants
11 VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN
12 FUND II, LLC, and VESTIN MORTGAGE, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15
16 COUNTY OF SAN DIEGO
17

18 RICHARD G. GENTON, TRUSTEE OF THE
19 RICHARD G. GENTON LIVING TRUST
20 DATED 06/05/01; MARIO O. LOPEZ AND
21 ALICIA L. LOPEZ, TRUSTEES OF THE
22 LOPEZ FAMILY TRUST DATED 12/14/88;
23 CHARLES M. FELTON AND SHARON D.
24 FELTON, TRUSTEES OF THE FELTON
25 FAMILY TRUST DATED 03/25/99; MARY P.
26 FELTON, TRUSTEE OF THE MARY P.
27 FELTON TRUST, DATED 11/03/04;
28 MARLOWE J. LANCASTER AND SHIRLEY C.
LANCASTER, TRUSTEES OF THE
LANCASTER FAMILY TRUST DATED
06/27/90; RONALD LIGHTERINK; SHERON
LIGHTERINK; LUIS G. GUERRERO AND
EMILIA GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIDE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
TRUSTEES OF THE EMMET A. AND MARY

Case No. GIC 873968

**NOTICE TO CLERK OF
SAN DIEGO COUNTY
SUPERIOR COURT OF
REMOVAL TO FEDERAL
COURT BY DEFENDANTS
VESTIN REALTY MORTGAGE
II, INC. (F/K/A) VESTIN FUND II,
LLC, AND VESTIN MORTGAGE,
INC.**

1 M. SJOBERG TRUST DATED 05/02/95;
2 MICHAEL E. COX; FRANCIS COX; DERELL
3 L. HARMON; DENISE L. HARMON; JOAN L.
4 MILLER; DONALD G. MILLER; STAN J.
5 PROGAR; MAUREEN C. PROGAR; JANE
6 HALPERN; TODD E. STERLING; CLYDE
7 MERRITT; DARLENE MERRITT; and ROES 1
8 through 5000, inclusive,

9 Plaintiffs,

10 v.

11 VESTIN REALTY MORTGAGE II, INC., (f/k/a)
12 VESTIN FUND II, LLC, VESTIN MORTGAGE,
13 INC., and DOES 1 through 50, Inclusive,

14 Defendants.

15 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

16 **PLEASE TAKE NOTICE** that on November 16, 2006, pursuant to 28 U.S.C. § 1446(d),
17 defendants VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II, LLC, VESTIN
18 MORTGAGE, INC. ("Vestin") filed a Notice of Removal in the offices of the Clerk of the United
19 States District Court for the Southern District of California. A copy of the Notice of Removal
20 (without exhibits) is attached hereto as Exhibit "A," and is served and filed herewith.

21 Section 1446(d) provides that this Court need take no further action with respect to this
22 case "unless and until the case is remanded."

23 Dated: November 16, 2006

24 SEAN T. PROSSER
25 JAMES P. MANISCALCO
26 MORRISON & FOERSTER LLP

27 By: 
28 James P. Maniscalco

Attorneys for Defendants
VESTIN REALTY MORTGAGE II, INC.,
(f/k/a) VESTIN FUND II, LLC, and VESTIN
MORTGAGE, INC.

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130. I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on November 16, 2006, I served a copy of:

**NOTICE TO CLERK OF SAN DIEGO COUNTY SUPERIOR COURT OF
REMOVAL TO FEDERAL COURT**

- ☐ **BY FACSIMILE [Code Civ. Proc sec. 1013(e)]** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 213.892.5454 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

- ☒ **BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

- ☐ **BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

la-890502

- 1 ☐ **BY PERSONAL SERVICE [Code Civ. Proc sec. 1011]** by placing a true copy
2 thereof enclosed in a sealed envelope addressed as follows for collection and
3 delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of
4 the document(s) listed above to the person(s) at the address(es) set forth below.

5 I am readily familiar with Morrison & Foerster LLP's practice for the collection and
6 processing of documents for hand delivery and know that in the ordinary course of
7 Morrison & Foerster LLP's business practice the document(s) described above will be
8 taken from Morrison & Foerster LLP's mailroom and hand delivered to the
9 document's addressee (or left with an employee or person in charge of the
10 addressee's office) on the same date that it is placed at Morrison & Foerster LLP's
11 mailroom.

- 12 ☐ **BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6]** by electronically
13 mailing a true and correct copy through Morrison & Foerster LLP's electronic mail
14 system to the e-mail address(s) set forth below, or as stated on the attached service
15 list per agreement in accordance with Code of Civil Procedure section 1010.6.

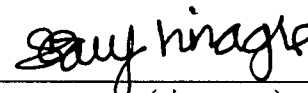
16 Attorneys for Plaintiffs

17 Erwin J. Shustak, Esq.
18 Thomas C. Frost, Esq.
19 John Cleary, Esq.
20 SHUSTAK & PARTNERS, P.C.
21 401 West "A" Street, Suite 2330
22 San Diego, CA 92101
23 Telephone: (619) 696-9500
24 Facsimile: (619) 615-5290

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed at San Diego, California, this 16th day of November, 2006.

28 _____
Stacy Vinagre
(typed)


(signature)

1 SEAN T. PROSSER (CA SBN 163903)
2 SProsser@mofo.com
3 JAMES MANISCALCO (CA SBN 179386)
4 JManiscalco@mofo.com
5 MORRISON & FOERSTER LLP
6 555 West Fifth Street
7 Los Angeles, California 90013-1024
8 Telephone: 213.892.5200
9 Facsimile: 213.892.5454

10 Attorneys for Defendants VESTIN REALTY
11 MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC,
12 and VESTIN MORTGAGE, INC.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 RICHARD G. GENTON, TRUSTEE OF THE
16 RICHARD G. GENTON LIVING TRUST
17 DATED 06/05/01; MARIO O. LOPEZ AND
18 ALICIA L. LOPEZ, TRUSTEES OF THE
19 LOPEZ FAMILY TRUST DATED 12/14/88;
20 CHARLES M. FELTON AND SHARON D.
21 FELTON, TRUSTEES OF THE FELTON
22 FAMILY TRUST DATED 03/25/99; MARY P.
23 FELTON, TRUSTEE OF THE MARY P.
24 FELTON TRUST, DATED 11/03/04;
25 MARLOWE J. LANCASTER AND SHIRLEY C.
26 LANCASTER, TRUSTEES OF THE
27 LANCASTER FAMILY TRUST DATED
28 06/27/90; RONALD LIGHTERINK; SHERON
LIGHTERINK; LUIS G. GUERRERO AND
EMILIA GUERRERO, TRUSTEES OF THE
GUERRERO FAMILY TRUST DATED
12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
LIVING TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIDE TRUST DATED 04/26/04; JANET S.
ANGELOFF; THOMAS L. DUEPPEN; JOYCE
B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
THE JOBST FAMILY TRUST DATED
06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
TRUSTEES OF THE EMMET A. AND MARY
M. SJOBERG TRUST DATED 05/02/95;

Case No.

**NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. § 1441
BY DEFENDANTS VESTIN
REALTY MORTGAGE II, INC.
(F/K/A) VESTIN FUND II, LLC,
AND VESTIN MORTGAGE, INC.**

1 MICHAEL E. COX; FRANCIS COX; DERELL
2 L. HARMON; DENISE L. HARMON; JOAN L.
3 MILLER; DONALD G. MILLER; STAN J.
4 PROGAR; MAUREEN C. PROGAR; JANE
5 HALPERN; TODD E. STERLING; CLYDE
6 MERRITT; DARLENE MERRITT; and ROES 1
7 through 5000, inclusive,

8 Plaintiffs,

9 v.

10 VESTIN REALTY MORTGAGE II, INC.,
11 (f/k/a) VESTIN FUND II, LLC, VESTIN
12 MORTGAGE, INC., and DOES 1 through 50,
13 Inclusive,

14 Defendants.

15 TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND THE CLERK OF
16 THE ABOVE-ENTITLED COURT:

17 PLEASE TAKE NOTICE that defendants VESTIN REALTY MORTGAGE
18 II, INC. (f/k/a) VESTIN FUND II, LLC, and VESTIN MORTGAGE, INC.
19 ("Vestin") hereby remove this action from the Superior Court of California, County
20 of San Diego to the United States District Court for the Central District of
21 California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 & 1453. The grounds for
22 removal are as follows:

23 **PROCEDURAL HISTORY**

24 1. On October 13, 2006, the above-captioned Plaintiffs filed a civil action
25 in the Superior Court of California for San Diego County, entitled *Genton v. Vestin*
26 *Realty Mortgage II, Inc.* (Case No. GIC 873968) (the "Superior Court Action"). A
27 true copy of the complaint in the Superior Court Action is attached as Exhibit "A."

28 2. On or about October 19, 2006, Plaintiffs served the Superior Court
Action on Vestin. True and correct copies of the summons received by Vestin are
attached as Exhibit "B."

3. On November 9, 2006, Plaintiffs filed their First Amended Complaint ("FAC") in the above-entitled action. A true copy of the FAC is attached as Exhibit "C."¹

TIMELINESS OF REMOVAL

4. Vestin first received formal notice of the Superior Court Action, through service of the summons and complaint on Vestin's registered agent for service of process, on October 19, 2006.

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it has been filed within 30 days of service upon Vestin of the summons and complaint.

VENUE IN THE SOUTHERN DISTRICT

6. Vestin files this Notice of Removal with the United States District Court for the Southern District of California because Plaintiffs allege that the Superior Court Action arose in the County of San Diego. (FAC ¶¶ 3-4, 27-28.)

BASIS FOR REMOVAL JURISDICTION

7. Generally. The Superior Court Action is removable to this Court pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b)) for at least the following reasons:

8. Covered Class Action. Plaintiffs purport to prosecute the Superior Court Action on behalf of a class of "all Vestin Fund II investors who voted against the 'Roll-Up', whereby Vestin Fund II merged into Vestin Realty II." (FAC ¶ 33.) Plaintiffs allege that "there are at least 1000 members of the proposed class." (FAC ¶ 34.) See 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

9. Diversity. The Superior Court Action satisfies the minimum diversity requirements of CAFA, 28 U.S.C. § 1332(d)(2)(A), for the following reasons:

¹ As of the date of this filing, Defendants had not yet been served with the FAC.

1 a. Defendant Vestin Realty Mortgage II, Inc. (f/k/a) Vestin Fund
2 II, LLC ("Vestin Realty Mortgage II") is a publicly traded real estate investment
3 trust. It is a corporation organized and existing under the laws of the State of
4 Maryland with its principal place of business located in Las Vegas, Nevada.

5 b. Defendant Vestin Mortgage, Inc. is a corporation organized and
6 existing under the laws of the State of Nevada and is licensed there as a mortgage
7 broker.

8 c. Plaintiffs allege that the individual members of the purported
9 class are residents of California, Nevada, Texas, Washington, Wisconsin, Montana,
10 Rhode Island, New York, and New Mexico. (FAC ¶¶ 6-26.)

11 10. Matter in Controversy. This amount in controversy of this action
12 exceeds \$5,000,000 and thereby satisfies the minimum amount in controversy for
13 removal under 28 U.S.C. § 1332(d)(2). Plaintiffs allege that they suffered
14 "substantial investment losses" (FAC ¶ 37) and have brought causes of action for
15 breach of contract, breach of the implied covenant of good faith and fair dealing,
16 and elder abuse pursuant to California Civil Code § 1761. (FAC ¶¶ 41-52.) While
17 Plaintiffs do not explicitly alleged the value of the matter in controversy, they are
18 seeking compensatory damages, punitive and exemplary damages (including treble
19 damages for elder abuse) and attorneys' fees as a result of their investment losses
20 and resulting harm. (*Id.*) A fair reading of the FAC demonstrates that the amount in
21 controversy exceeds the jurisdictional minimum for removal.

22 11. No CAFA Exclusions. The Superior Court Action does not fall within
23 any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d)
24 because Vestin is not a citizen of California, the state in which the Superior Court
25 Action was originally filed.

26 ///

27 ///

NOTICE PROVIDED TO STATE COURT AND ADVERSE PARTIES

12. Vestin is filing, on the date of this Notice, a copy of this Notice of Removal in the Superior Court of California, County of San Diego and will provide written notice of this Notice of Removal to Plaintiffs, as required by 28 U.S.C. §§ 1446(d) & 1453(b). True and correct copies of the Notice to the Clerk of San Diego County Superior Court of Removal to Federal Court (without exhibits) and the Notice to Plaintiffs of Removal to Federal Court (without exhibits) that will be filed with the San Diego County Superior Court are attached hereto as Exhibits "D" and "E."

13. In filing this Notice of Removal, Vestin does not waive any defenses that may be available to it in this action.

CONCLUSION

14. Vestin respectfully requests that this Court exercise subject matter jurisdiction over the Superior Court Action; enter such orders and grant relief as may be necessary to secure removal and to prevent further proceedings in the Superior Court of California, County of San Diego; and grant to Vestin such further relief as is necessary to secure this Court's jurisdiction.

Dated: November 16, 2006

SEAN T. PROSSER
JAMES P. MANISCALCO
MORRISON & FOERSTER LLP

By: James P. Maniscalco by KSL
James P. Maniscalco

Attorneys for Defendants
VESTIN REALTY MORTGAGE II,
INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

CERTIFICATE OF SERVICE BY MAIL
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441 BY DEFENDANTS
VESTIN REALTY MORTGAGE II, INC. (F/K/A) VESTIN FUND II, LLC, AND
VESTIN MORTGAGE, INC.**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130, in accordance with Morrison & Foerster's ordinary business practices:

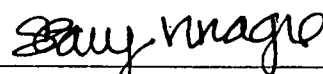
Attorneys for Plaintiffs

Erwin J. Shustak, Esq.
Thomas C. Frost, Esq.
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401 West "A" Street, Suite 2330
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I declare under penalty of perjury that the above is true and correct.

Executed at San Diego, California, this 16th day of November, 2006.

Stacy Vinagre
(typed)


(signature)

1 SEAN T. PROSSER (CA SBN 163903)
SProsser@mofo.com
2 JAMES MANISCALCO (CA SBN 179386)
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7 Attorneys for Defendants
VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN
8 FUND II, LLC, and VESTIN MORTGAGE, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO
11

12 RICHARD G. GENTON, TRUSTEE OF THE
RICHARD G. GENTON LIVING TRUST
13 DATED 06/05/01; MARIO O. LOPEZ AND
ALICIA L. LOPEZ, TRUSTEES OF THE
14 LOPEZ FAMILY TRUST DATED 12/14/88;
CHARLES M. FELTON AND SHARON D.
15 FELTON, TRUSTEES OF THE FELTON
FAMILY TRUST DATED 03/25/99; MARY
16 P. FELTON, TRUSTEE OF THE MARY P.
FELTON TRUST, DATED 11/03/04;
17 MARLOWE J. LANCASTER AND
SHIRLEY C. LANCASTER, TRUSTEES OF
18 THE LANCASTER FAMILY TRUST
DATED 06/27/90; RONALD LIGHTERINK;
19 SHERON LIGHTERINK; LUIS G.
GUERRERO AND EMILIA GUERRERO,
20 TRUSTEES OF THE GUERRERO FAMILY
TRUST DATED 12/19/96; DANIEL DEL
21 FRATE AND MARION DEL FRATE,
TRUSTEES OF THE DEL FRATE LIVING
22 TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
23 MCBRIDE TRUST DATED 04/26/04;
JANET S. ANGELOFF; THOMAS L.
24 DUEPPEN; JOYCE B. DUEPPEN; JOEL E.
JOBST, TRUSTEE OF THE JOBST
25 FAMILY TRUST DATED 06/17/94;
JOSEPH M. AMORIN; EMMET A.
26
27
28

Case No. GIC 873968

**NOTICE TO PLAINTIFFS
OF REMOVAL TO FEDERAL
COURT BY DEFENDANTS
VESTIN REALTY MORTGAGE
II, INC. (F/K/A) VESTIN FUND II,
LLC, AND VESTIN MORTGAGE,
INC.**

1 SJOBERG AND MARY M. SJOBERG,
2 TRUSTEES OF THE EMMET A. AND
3 MARY M. SJOBERG TRUST DATED
4 05/02/95; MICHAEL E. COX; FRANCIS
5 COX; DERELL L. HARMON; DENISE L.
6 HARMON; JOAN L. MILLER; DONALD G.
7 MILLER; STAN J. PROGAR; MAUREEN C.
8 PROGAR; JANE HALPERN; TODD E.
9 STERLING; CLYDE MERRITT; DARLENE
10 MERRITT; and ROES 1 through 5000,
11 inclusive,

12 Plaintiffs,

13 v.

14 VESTIN REALTY MORTGAGE II, INC., (f/k/a)
15 VESTIN FUND II, LLC, VESTIN MORTGAGE,
16 INC., and DOES 1 through 50, Inclusive,

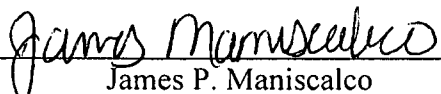
17 Defendants.

18 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that, on November 16, 2006, pursuant to 28 U.S.C. § 1446(d),
20 Defendants VESTIN REALTY MORTGAGE II, INC. (f/k/a) VESTIN FUND II, LLC, and
21 VESTIN MORTGAGE, INC. ("Vestin") filed a Notice of Removal in the offices of the Clerk of
22 the United States District Court for the Southern District of California. A true and correct copy of
23 said Notice of Removal (without exhibits) is attached hereto as Exhibit "A" and is served and
24 filed herewith.

25 Dated: November 16, 2006

26 SEAN T. PROSSER
27 JAMES P. MANISCALCO
28 MORRISON & FOERSTER LLP

By: 
James P. Maniscalco

Attorneys for Defendants
VESTIN REALTY MORTGAGE II, INC.
(f/k/a) VESTIN FUND II, LLC, and VESTIN
MORTGAGE, INC.

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, Suite 100, San Diego, California 92130. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on November 16, 2006, I served a copy of:

NOTICE TO PLAINTIFFS OF REMOVAL TO FEDERAL COURT

☐ **BY FACSIMILE [Code Civ. Proc sec. 1013(e)]** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 213.892.5454 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

☒ **BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

☐ **BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

la-890502

- ☐ **BY PERSONAL SERVICE [Code Civ. Proc sec. 1011]** by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with Morrison & Foerster LLP's practice for the collection and processing of documents for hand delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be taken from Morrison & Foerster LLP's mailroom and hand delivered to the document's addressee (or left with an employee or person in charge of the addressee's office) on the same date that it is placed at Morrison & Foerster LLP's mailroom.

- ☐ **BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6]** by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

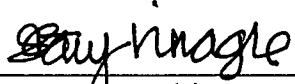
Attorneys for Plaintiffs

Erwin J. Shustak, Esq.
 Thomas C. Frost, Esq.
 John Cleary, Esq.
 SHUSTAK & PARTNERS, P.C.
 401 West "A" Street, Suite 2330
 San Diego, CA 92101
 Telephone: (619) 696-9500
 Facsimile: (619) 615-5290

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California, this 16th day of November, 2006.

 Stacy Vinagre
 (typed)


 (signature)

1 SEAN T. PROSSER (CA SBN 163903)
SProsser@mofo.com
2 JAMES MANISCALCO (CA SBN 179386)
JManiscalco@mofo.com
3 MORRISON & FOERSTER LLP
4 555 West Fifth Street
Los Angeles, California 90013-1024
5 Telephone: 213.892.5200
6 Facsimile: 213.892.5454

7 Attorneys for Defendants VESTIN REALTY
MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC,
8 and VESTIN MORTGAGE, INC.

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 RICHARD G. GENTON, TRUSTEE OF THE
12 RICHARD G. GENTON LIVING TRUST
DATED 06/05/01; MARIO O. LOPEZ AND
13 ALICIA L. LOPEZ, TRUSTEES OF THE
LOPEZ FAMILY TRUST DATED 12/14/88;
14 CHARLES M. FELTON AND SHARON D.
FELTON, TRUSTEES OF THE FELTON
15 FAMILY TRUST DATED 03/25/99; MARY P.
FELTON, TRUSTEE OF THE MARY P.
FELTON TRUST, DATED 11/03/04;
17 MARLOWE J. LANCASTER AND SHIRLEY C.
LANCASTER, TRUSTEES OF THE
18 LANCASTER FAMILY TRUST DATED
19 06/27/90; RONALD LIGHTERINK; SHERON
LIGHTERINK; LUIS G. GUERRERO AND
20 EMILIA GUERRERO, TRUSTEES OF THE
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21 12/19/96; DANIEL DEL FRATE AND MARION
DEL FRATE, TRUSTEES OF THE DEL FRATE
22 LIVING TRUST DATED 09/14/99; RALPH H.
MCBRIDE, TRUSTEE OF THE RALPH H.
MCBRIDE TRUST DATED 04/26/04; JANET S.
24 ANGELOFF; THOMAS L. DUEPPEN; JOYCE
B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF
25 THE JOBST FAMILY TRUST DATED
26 06/17/94; JOSEPH M. AMORIN; EMMET A.
SJOBERG AND MARY M. SJOBERG,
27 TRUSTEES OF THE EMMET A. AND MARY
M. SJOBERG TRUST DATED 05/02/95;
28

Case No.

**NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. § 1441
BY DEFENDANTS VESTIN
REALTY MORTGAGE II, INC.
(F/K/A) VESTIN FUND II, LLC,
AND VESTIN MORTGAGE, INC.**

1 MICHAEL E. COX; FRANCIS COX; DERELL
2 L. HARMON; DENISE L. HARMON; JOAN L.
3 MILLER; DONALD G. MILLER; STAN J.
4 PROGAR; MAUREEN C. PROGAR; JANE
5 HALPERN; TODD E. STERLING; CLYDE
6 MERRITT; DARLENE MERRITT; and ROES 1
7 through 5000, inclusive,

8 Plaintiffs,

9 v.

10 VESTIN REALTY MORTGAGE II, INC.,
11 (f/k/a) VESTIN FUND II, LLC, VESTIN
12 MORTGAGE, INC., and DOES 1 through 50,
13 Inclusive,

14 Defendants.

15 TO PLAINTIFFS, THEIR ATTORNEYS OF RECORD, AND THE CLERK OF
16 THE ABOVE-ENTITLED COURT:

17 PLEASE TAKE NOTICE that defendants VESTIN REALTY MORTGAGE
18 II, INC. (f/k/a) VESTIN FUND II, LLC, and VESTIN MORTGAGE, INC.
19 ("Vestin") hereby remove this action from the Superior Court of California, County
20 of San Diego to the United States District Court for the Central District of
21 California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 & 1453. The grounds for
22 removal are as follows:

23 **PROCEDURAL HISTORY**

24 1. On October 13, 2006, the above-captioned Plaintiffs filed a civil action
25 in the Superior Court of California for San Diego County, entitled *Genton v. Vestin*
26 *Realty Mortgage II, Inc.* (Case No. GIC 873968) (the "Superior Court Action"). A
27 true copy of the complaint in the Superior Court Action is attached as Exhibit "A."

28 2. On or about October 19, 2006, Plaintiffs served the Superior Court
Action on Vestin. True and correct copies of the summons received by Vestin are
attached as Exhibit "B."

3. On November 9, 2006, Plaintiffs filed their First Amended Complaint ("FAC") in the above-entitled action. A true copy of the FAC is attached as Exhibit "C."¹

TIMELINESS OF REMOVAL

4. Vestin first received formal notice of the Superior Court Action, through service of the summons and complaint on Vestin's registered agent for service of process, on October 19, 2006.

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it has been filed within 30 days of service upon Vestin of the summons and complaint.

VENUE IN THE SOUTHERN DISTRICT

6. Vestin files this Notice of Removal with the United States District Court for the Southern District of California because Plaintiffs allege that the Superior Court Action arose in the County of San Diego. (FAC ¶¶ 3-4, 27-28.)

BASIS FOR REMOVAL JURISDICTION

7. Generally. The Superior Court Action is removable to this Court pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b)) for at least the following reasons:

8. Covered Class Action. Plaintiffs purport to prosecute the Superior Court Action on behalf of a class of "all Vestin Fund II investors who voted against the 'Roll-Up', whereby Vestin Fund II merged into Vestin Realty II." (FAC ¶ 33.) Plaintiffs allege that "there are at least 1000 members of the proposed class." (FAC ¶ 34.) See 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

9. Diversity. The Superior Court Action satisfies the minimum diversity requirements of CAFA, 28 U.S.C. § 1332(d)(2)(A), for the following reasons:

¹ As of the date of this filing, Defendants had not yet been served with the FAC.

1 a. Defendant Vestin Realty Mortgage II, Inc. (f/k/a) Vestin Fund
2 II, LLC ("Vestin Realty Mortgage II") is a publicly traded real estate investment
3 trust. It is a corporation organized and existing under the laws of the State of
4 Maryland with its principal place of business located in Las Vegas, Nevada.

5 b. Defendant Vestin Mortgage, Inc. is a corporation organized and
6 existing under the laws of the State of Nevada and is licensed there as a mortgage
7 broker.

8 c. Plaintiffs allege that the individual members of the purported
9 class are residents of California, Nevada, Texas, Washington, Wisconsin, Montana,
10 Rhode Island, New York, and New Mexico. (FAC ¶¶ 6-26.)

11 10. Matter in Controversy. This amount in controversy of this action
12 exceeds \$5,000,000 and thereby satisfies the minimum amount in controversy for
13 removal under 28 U.S.C. § 1332(d)(2). Plaintiffs allege that they suffered
14 "substantial investment losses" (FAC ¶ 37) and have brought causes of action for
15 breach of contract, breach of the implied covenant of good faith and fair dealing,
16 and elder abuse pursuant to California Civil Code § 1761. (FAC ¶¶ 41-52.) While
17 Plaintiffs do not explicitly alleged the value of the matter in controversy, they are
18 seeking compensatory damages, punitive and exemplary damages (including treble
19 damages for elder abuse) and attorneys' fees as a result of their investment losses
20 and resulting harm. (*Id.*) A fair reading of the FAC demonstrates that the amount in
21 controversy exceeds the jurisdictional minimum for removal.

22 11. No CAFA Exclusions. The Superior Court Action does not fall within
23 any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d)
24 because Vestin is not a citizen of California, the state in which the Superior Court
25 Action was originally filed.

26 ///

27 ///

NOTICE PROVIDED TO STATE COURT AND ADVERSE PARTIES

12. Vestin is filing, on the date of this Notice, a copy of this Notice of Removal in the Superior Court of California, County of San Diego and will provide written notice of this Notice of Removal to Plaintiffs, as required by 28 U.S.C. §§ 1446(d) & 1453(b). True and correct copies of the Notice to the Clerk of San Diego County Superior Court of Removal to Federal Court (without exhibits) and the Notice to Plaintiffs of Removal to Federal Court (without exhibits) that will be filed with the San Diego County Superior Court are attached hereto as Exhibits "D" and "E."

13. In filing this Notice of Removal, Vestin does not waive any defenses that may be available to it in this action.

CONCLUSION

14. Vestin respectfully requests that this Court exercise subject matter jurisdiction over the Superior Court Action; enter such orders and grant relief as may be necessary to secure removal and to prevent further proceedings in the Superior Court of California, County of San Diego; and grant to Vestin such further relief as is necessary to secure this Court's jurisdiction.

Dated: November 16, 2006

SEAN T. PROSSER
JAMES P. MANISCALCO
MORRISON & FOERSTER LLP

By: James P. Maniscalco by KSL
James P. Maniscalco

Attorneys for Defendants
VESTIN REALTY MORTGAGE II,
INC., (f/k/a) VESTIN FUND II, LLC,
and VESTIN MORTGAGE, INC.

CERTIFICATE OF SERVICE BY MAIL
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California 92130; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441 BY DEFENDANTS
VESTIN REALTY MORTGAGE II, INC. (F/K/A) VESTIN FUND II, LLC, AND
VESTIN MORTGAGE, INC.**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California 92130, in accordance with Morrison & Foerster's ordinary business practices:

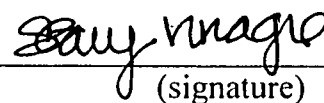
Attorneys for Plaintiffs

Erwin J. Shustak, Esq.
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401 West "A" Street, Suite 2330
San Diego, CA 92101
Telephone: (619) 696-9500
Facsimile: (619) 615-5290

I declare under penalty of perjury that the above is true and correct.

Executed at San Diego, California, this 16th day of November, 2006.

Stacy Vinagre
(typed)


(signature)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RICHARD G. GENTON, TRUSTEE OF THE RICHARD G. GENTON LIVING TRUST DATED 06/05/01; MARIO O. LOPEZ AND ALICIA L. LOPEZ, TRUSTEES OF THE LOPEZ FAMILY TRUST DATED 12/14/88; CHARLES M. FELTON AND SHARON D. FELTON, TRUSTEES OF THE FELTON FAMILY TRUST DATED 03/25/99; MARY P. FELTON, TRUSTEE OF THE MARY P. FELTON TRUST, DATED 11/03/04; MARLOWE J. LANCASTER AND SHIRLEY C. LANCASTER, TRUSTEES OF THE LANCASTER FAMILY TRUST DATED 06/27/90; RONALD LIGHTERINK; SHERON LIGHTERINK; LUIS G. GUERRERO AND EMILIA GUERRERO, TRUSTEES OF THE GUERRERO FAMILY TRUST DATED 12/19/96; DANIEL DEL FRATE AND MARION DEL FRATE, TRUSTEES OF THE DEL FRATE LIVING TRUST DATED 09/14/99; RALPH H. MCBRIDE, TRUSTEE OF THE RALPH H. MCBRIDE TRUST DATED 04/26/04; JANET S. ANGELOFF; THOMAS L. DUEPPEN; JOYCE B. DUEPPEN; JOEL E. JOBST, TRUSTEE OF THE JOBST FAMILY TRUST DATED 06/17/94; JOSEPH M. AMORIN; EMMET A. SJOBERG AND MARY M. SJOBERG, TRUSTEES OF THE EMMET A. AND MARY M. SJOBERG TRUST DATED 05/02/95; MICHAEL E. COX; FRANCIS COX; DERELL L. HARMON; DENISE L. HARMON; JOAN L. MILLER; DONALD G. MILLER; STAN J. PROGAR; MAUREEN C. PROGAR; JANE HALPERN; TODD E. STERLING; CLYDE MERRITT; DARLENE MERRITT; and ROES 1 through 5000, inclusive,

(b) County of Residence of First Listed Plaintiff RIVERSIDE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Erwin J. Shustack, Esq.
Thomas C. Frost, Esq.
John Cleary, Esq.
SHUSTAK & PARTNERS, P.C.
401 West "A" Street, Suite 2330
San Diego, California 92101
Telephone: (619) 696-9500

DEFENDANTS

VESTIN REALTY MORTGAGE II, INC., (f/k/a) VESTIN FUND II, LLC, VESTIN MORTGAGE, INC. and DOES 1 through 50, Inclusive,

FILED
06 NOV 16 PM 4:20
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

'06 CV 2517

BEN WMC

County of Residence of First Listed Defendant Clark County, NV
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Sean T. Prosser, Esq.
SProsser@mofo.com
James Maniscalco, Esq.
JManiscalco@mofo.com
MORRISON & FOERSTER LLP
555 West Fifth Street, Suite 3500
Los Angeles, California 90013-1024
Telephone: (213) 892-5200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts

131815 Ser 11/16/06 \$350

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR & DISCLOSURE ACT	FEDERAL TAX SUITS	OTHER
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding
 ☒ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify) _____
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1332(d) and 1453(b)

Brief description of cause:

Breach of contract for failure to pay class members pro-rata share of appraised net value of company.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Kathy Hardcastle

DOCKET NUMBER A528385 (Clark County, NV)

DATE

November 16, 2006

SIGNATURE OF ATTORNEY OF RECORD

James P. Maniscalco

James Maniscalco by KSC

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

131815 -- A1
November 16, 2006

Code	Case #	Qty	Amount
CV086900	3-06-CV-2517		60.00 CH
Judge	- BENETIZ		
CV086400			100.00 CH
CV510000			190.00 CH

Total-> 350.00

FROM: CIVIL FILING
GENTON ET AL V. VESTIN REALTY
MORTGAGE II INC ET AL
BC# 031624 SH